85 Tenn. 55. And the rights of the holder of a common law lien should be no greater. *Eichelberger* v. *Miller*, 20 Md. 332. Neither legal nor equitable title is necessary to an insurable interest, and the holder of a lien may insure to the extent of his claim. *Insurance Co.* v. *Stinson*, 103 U. S. 25; *Rohrbach* v. *Germania Fire Insurance Co.*, 62 N. Y. 47. Thus the plaintiff in the principal case might have protected himself fully, and there seems little reason to make any implication in his favor. See *Mosser* v. *Donaldson*, 10 Atl. 766 (Pa.).

INTERSTATE COMMERCE — CONTROL BY CONGRESS — ACTION BY THE COURTS PENDING INVESTIGATION BY INTERSTATE COMMERCE COMMISSION. — The plaintiffs were shippers on the defendant railroad which filed notice of a new schedule of rates. The plaintiffs, claiming that the new rates would cause irreparable injury, sued in equity to prevent their establishment pending a determination of their reasonableness by the Interstate Commerce Commission. *Held*, that the bill be dismissed. *Atlantic Coast Line Ry. Co.* v. *Macon Grocery Co.*, 166 Fed. 206 (C. C. A., Fifth Circ., Jan. 5, 1909). See NOTES, p. 524.

MORTGAGES — EQUITY OF REDEMPTION — MORTGAGEE'S RIGHT TO CONSOLIDATE MORTGAGES. — The owner of certain lots of land mortgaged them to the defendant. The equities of redemption he assigned to the plaintiff, who later acquired the equity of redemption in another lot, also mortgaged to the defendant, but not by the same mortgagor, and expressly excepted from the provisions of the Conveyancing Act, 1881. The plaintiff tendered the amount due on this last mortgage, but the defendant claimed the right to consolidate all the mortgages. *Held*, that the plaintiff may redeem this mortgage separately. *Sharp* v. *Rickards*, 99 L. T. R. 916 (Eng., Ch., Nov. 11, 1908).

It was formerly well established law in England that when a mortgagee acquired several mortgages on various estates, all given by the same mortgagor, he could consolidate his claims as against either the mortgagor or his assignee. *Vint* v. *Padget*, 2 De G. & J. 611. This rule was based on the ground that he who seeks equity must do equity, but its justice in practice was frequently questioned, and it was abolished by the Conveyancing Act, 1881, except where the right was expressly reserved in one of the mortgage deeds. 44 & 45 VICT. c. 41. The general rule in our courts has always been that a mortgagee can only demand payment of the debt due and covered by the mortgage sought to be redeemed. *Cohn* v. *Hoffman*, 56 Ark. 119. But the mortgagee has been allowed to consolidate a claim arising out of the same transaction in which the mortgage was given; so also a claim for money expended in protecting the property or title. *Burgett* v. *Osborne*, 172 Ill. 227; *Robinson* v. *Ryan*, 25 N. Y. 320. The principal case recognizes that on equitable grounds the English rule in so far as it still prevails should not be extended to a case where the mortgages were executed by different mortgagors.

MUNICIPAL CORPORATIONS — OFFICERS AND AGENTS — EFFECT OF RE-ELECTION AFTER OUSTER. — The charter of New York City provided that the president of a borough, an officer chosen by popular vote, might be removed for cause by the governor, and that a vacancy should be filled by a majority of the aldermen from the borough. The defendant, having been so removed, was immediately selected by the aldermen for the remainder of his original term. *Held*, that he is not entitled to the office. *People* v. *Ahearn*, 40 N. Y. L. J. 2477 (N. Y., App. Div., March, 1909).

For a discussion of the principles involved, see 20 HARV. L. REV. 316.

NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — ERRONEOUS INSTRUCTION MERELY AS TO DAMAGES. — A statute prescribed "a new trial" as the remedy for prejudicial error committed during a trial, but neither expressly authorized nor expressly prohibited retrial of part of the issues. After

verdict for the plaintiff, retrial was ordered solely for error in the instructions to the jury as to the measure of damages. *Held*, that a new trial upon all the issues, resulting in a verdict for the defendant, is not error. *Cerny* v. *Paxton and Gallagher Co.*, 119 N. W. 14 (Neb.).

A new trial as a remedy for prejudicial error is of comparatively modern development in the common law. See *Bright* v. *Eynon*, 1 Burr. 390; 3 Bl. Comm. 388, 390. Retrial of all the issues has never been a matter of right, the court having discretion to confine it to particular issues. See *Hutchinson* v. *Piper*, 4 Taunt. 555. A new trial is but a means to an end, the correction of error. Hence, when error affects but one issue, which is readily separable and which can be examined without considering the general merits of the case, the new trial should be limited to that issue. *Benton* v. *Collins*, 125 N. C. 83. But see *Edwards* v. *Lewis*, 18 Ala. 494. This is true when issues have been separately submitted to the jury. *Mitchell* v. *Mitchell*, 122 N. C. 332. The issue upon a single plea may be retried; or, merely the question of damages. *Third Natl. Bank* v. *Owen*, 101 Mo. 558, 585; *Boyd* v. *Brown*, 17 Pick. (Mass.) 453, 461. The opposite rule, taken by the principal case, clogs the courts with useless litigation, subjects the state and the parties to unnecessary expense, and deprives the plaintiff of ground legally won. *Lisbon* v. *Lyman*, 49 N. H. 553. As the statute in question did not forbid partial retrials, the common law rule should have prevailed, and such has been the holding in other jurisdictions having similar statutes. *San Diego Co.* v. *Neale*, 78 Cal. 63.

Nuisance — Equitable Relief — Bill against Public Nuisance by Individual. — The defendant, a riparian owner on New York Bay, erected a pier. This was so constructed as to hinder the free access of the public, by way of the sea-shore, to the plaintiff's place of amusement. The plaintiff sought to enjoin this obstruction, showing that it caused him special damage. *Held*, that the injunction should be granted. *Barnes* v. *Midland Railroad Terminal Co.*, 193 N. Y. 378.

This decision overrules that of the lower court discussed in 22 Harv. L. Rev. 137.

Pardon — Validity of Condition Extending beyond Term of Sentence. — A convict was pardoned on condition that if he subsequently committed a felony, the pardon should be void, and he should serve, in addition to the penalty imposed for the subsequent offense, that part of the original sentence which remained unserved at the time of his discharge. After the term of his original sentence had expired, he was convicted of a felony and sentenced to prison. After the expiration of the subsequent sentence, he was detained by reason of the condition in the pardon. *Held*, that the detention is lawful. *Ex parte Kelley*, 99 Pac. 368 (Cal.).

The rule that the power to grant a pardon carries with it the power of granting a conditional pardon is clearly settled. *Arthur* v. *Craig*, 48 Ia. 264. But the condition, of course, must not be illegal. See *State* v. *Smith*, 1 Bailey (S. C.) 283. The general rule is that a convict recommitted after condition broken may be detained after the time fixed for the expiration of his original sentence until he has served the unserved portion of that sentence. *In re McKenna*, 79 Vt. 34. A statute to the same effect has been held constitutional. *Fuller* v. *State*, 122 Ala. 32. On the other hand, it has been laid down that conditions which are to extend beyond the term of the sentence are illegal, as a usurpation of the judicial function by the executive. *In re Prout*, 12 Idaho 494. And it has been held that the duration of the condition will be limited to the period of sentence, unless the contrary is clearly stated. *Huff* v. *Dyer*, 4 Oh. Cir. Ct. R. 595. But of the few decisions on the point the majority support the principal case, and that, it would seem, with sound policy. *State* v. *Barnes*, 32 S. C. 14.

Pledges — Rights of Pledgee of Mortgage who Buys in Title at Foreclosure Sale. — The defendant gave the plaintiff his note, and assigned